

SOUTH DAKOTA DEPARTMENT OF GAME, FISH AND PARKS
523 East Capitol Avenue
Pierre, South Dakota

PROFESSIONAL SERVICES/CONSULTANT CONTRACT

Asphalt Surface Treatment Construction Management
Oakwood Lakes State Park & Lake Poinsett Recreation Area
Brookings County, South Dakota
Project Nos. Oakw12Ot & Poin12Ot

Brosz Engineering
PO Box 23
Pierre, SD 57501
605-224-1123 (Phone)
(CONSULTANT)

SD Department of Game, Fish & Parks
523 East Capitol
Pierre, South Dakota 57501
(STATE)

The State hereby enters into this Agreement for services with Consultant in consideration of and pursuant to the terms and conditions set forth herein.

1. The Consultant will perform those services described in the Work Plan, attached hereto as Exhibit A and by this reference incorporated herein.
2. The Consultant's services under this Agreement shall commence on April 1, 2011 and end on December 31, 2011, unless sooner terminated pursuant to the terms hereof.
3. The Consultant will not use State equipment, supplies or facilities. The Consultant will provide the State with its Employer Identification Number, Federal Tax Identification Number or Social Security Number upon execution of this Agreement.
4. The State will make payment for services upon satisfactory completion of the services. The **TOTAL CONTRACT AMOUNT** is an amount not to exceed \$12,940.00. The State will not pay Consultant's expenses as a separate item. Payment will be made pursuant to itemized invoices submitted with a signed state voucher. Payment will be made consistent with SDCL ch. 5-26.
5. Consultant agrees to hold harmless and indemnify the State of South Dakota, its officers and employees from and against any and all actions, suits, damages, liability or other proceedings which may arise as a result of the negligence, misconduct, error or omission of any officer, agent, consultant or employee of Consultant. This section does not require the Consultant to indemnify the State, its officers, agents or employees from claims or liability arising solely from the acts or omissions of the State, its officers, agents or employees.

6. The Consultant, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits as follows:

A. Commercial General Liability Insurance:

The Consultant shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit.

B. Professional Liability Insurance or Miscellaneous Professional Liability Insurance:

The Consultant agrees to procure and maintain professional liability insurance or miscellaneous professional liability insurance with a limit not less than \$1,000,000.00.

C. Business Automobile Liability Insurance:

The Consultant shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

D. Worker's Compensation Insurance:

The Consultant shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

Before beginning work under this Agreement, Consultant shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement. In the event a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Consultant agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Consultant shall furnish copies of insurance policies if requested by the State.

7. While performing services hereunder, the Consultant is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

8. Consultant agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to the person or property of third parties, or which may otherwise subject Consultant or the State to liability. Consultant shall report any such event to the State immediately upon discovery.

Consultant's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Consultant's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this section shall not excuse or satisfy any obligation of Consultant to report any event to law enforcement or other entities under the requirements of any applicable law.

9. This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Consultant breaches any of the terms or conditions hereof, this Agreement may be terminated by the State at any time with or without notice. If termination for such a default is effected by the State, any payments due to Consultant at the time of termination may be adjusted to cover any additional costs to the State because of Consultant's default. Upon termination the State may take over the work and may award another party an agreement to complete the work under this Agreement. If after the State terminates for a default by Consultant it is determined that Consultant was not at fault, then the Consultant shall be paid for eligible services rendered and expenses incurred up to the date of termination.

10. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

11. This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

13. The Consultant will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

14. The Consultant may not use subcontractors to perform the services described herein without the express prior written consent of the State. The Consultant will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Consultant will cause its subcontractors, agents, and employees to comply, with applicable federal,

state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

15. Consultant hereby acknowledges and agrees that all reports, plans, specifications, technical data, miscellaneous drawings, software system programs and documentation, procedures, or files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain the software program, and all information contained therein provided to the State by the Consultant in connection with its performance of services under this Agreement shall belong to and is the property of the State and will not be used in any way by the Consultant without the written consent of the State. Papers, reports, forms, software programs, source code(s) and other material which are a part of the work under this Agreement will not be copyrighted without written approval of the State.

16. The Consultant certifies that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment or suspension, or declared ineligible from participating in transactions by the federal government or any state or local government department or agency. Consultant further agrees that it will immediately notify the State if during the term of this Agreement Consultant or its principals become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

17. Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to Ryan Tobin on behalf of the State, and by Scott Schweitzer, on behalf of the Consultant, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

18. In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

19. All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

In Witness Whereof, the parties signify their agreement effective the date above first written by the signatures affixed below.

Ellings 4.11.11
Engineering Supervisor Date

Douglas Hoyer 4-11-11
Division Director Date

Scott Hoyer 4/7/11
Consultant Date

- State Agency Coding (MSA Center) _____.
- State Agency MSA Company for which contract will be paid _____.
- Object/subobject MSA account to which voucher will be coded _____.
- Name and phone number of contact person in State Agency who can provide additional information regarding this contract _____.

Agreement For Engineering Services

Asphalt Surface Treatment: Oakwood Lakes State Park & Lake Poinsett Recreation Area

Project Number: Oakw120t, Poin120t

PURPOSE:

The purpose of this work order is to provide Scope of Services, Schedule, and Budget, for overview, coordination, and general consultations in conjunction with Asphalt Surface Treatment at Oakwood Lakes State Park & Lake Poinsett Recreation Area (Project) for South Dakota Game Fish & Parks (Owner).

SCOPE OF WORK:

This scope of work identifies tasks that are required to adequately prepare plans and specifications for improvements. In addition, the scope of work also addresses meetings, coordination, and inspection requirements that are needed to successfully complete the project.

Construction Administration Services for gravel and asphalt maintenance, and asphalt paving at various locations at Oakwood Lakes State Park & Lake Poinsett Recreation Area.

PRELIMINARY SERVICES

None

ENGINEERING REPORTS

None

SURVEYING SERVICES

None

DESIGN SERVICES

None

CONSTRUCTION MANAGEMENT SERVICES

Task 14 – Construction Staking

Brosz Engineering will complete all necessary field staking. Field staking will be sufficient to convey all completed Project locations and elevations to the Contractor. Should the need arise for additional staking, or re-staking that is not covered in the construction contract, contract modifications will be negotiated.

Task 15 – Construction Inspection

Brosz Engineering will provide inspection services for the proposed Project. An inspector shall conduct oversight of the Contractor and any subcontractors while work is being performed. Inspection shall be performed to ensure that all conditions of the Contract Documents are being strictly adhered to. The inspector shall immediately notify the Owner and the Engineer upon any unauthorized deviation of the Contract Documents.

Brosz Engineering anticipates the project will last Four week(s). This Project will require a minimum of Five site visits per week. If conditions change that will require Brosz Engineering to spend additional time on the project, contract modifications will be negotiated.

Task 16 – Construction Management and Coordination

Brosz Engineering will provide construction management and coordination services for the proposed projects. These services will be with both the Contractor and all funding agencies involved in the project. Services under this task include conducting a preconstruction conference, resolving issues, reviewing shop drawings, issuing design clarifications, assisting with pay estimates, facilitating meetings, and providing all other necessary assistance for successful completion of the proposed construction project.

Task 17 – Materials Testing

Brosz Engineering will complete all necessary testing of construction, or on-site materials to ensure conformance to the plans and specifications. If re-testing of the project becomes necessary, and the condition is not specified in the construction contract, contract modifications will be negotiated.

Task 18 – As Built Drawings

Brosz Engineering will complete As-built drawings or Record Drawings as required by the Owner or Governmental body. As-builts will be submitted to the South Dakota Game Fish & Parks in PAPER format no later than Twelve week(s) after project closeout.

DELIVERABLES:

Construction progress reports, and Record Drawings

TIME OF PERFORMANCE:

Work will be undertaken and completed in a sequence leading to expeditious completion, but in any event, all the services required under this Agreement shall be

completed by the following dates or number of consecutive calendar days from the authorization to proceed.

Contract completion date for this project shall be no later than **December 31, 2011**.

If the Engineer fails to perform the services within the time specified in the contract, or any extension, the Engineer shall request in writing an extension of time which must be approved by the Owner.

The Engineer shall provide a monthly progress report describing work planned, work currently in progress, and any problems encountered with the survey data, meeting design standards, or the Owner's recommendations.

PAYMENT:

Brosz Engineering shall bill the Owner monthly indicating the services performed and the cost of such services according to the Engineer's standard fee schedule on a time spent basis. The not-to-exceed cost limits of the Engineer's services shall be **\$12940.00**.

A cost breakdown for the services performed under this contract can be found in Attachment 1.

CONTACT PERSONNEL:

Consultant: Scott Schweitzer
Owner: Jeff Peters

WORK ORDER EFFECTIVE DATE:

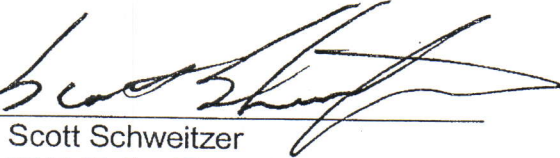
This work order is effective as of **April 01, 2011**

IN WITNESS WHEREOF, duly authorized representatives of the ENGINEER and of the OWNER have executed this Work Order evidencing its issuance by ENGINEER and acceptance by OWNER.

ENGINEER:

Brosz Engineering, Inc.
P.O. Box 23
Pierre, SD 57501

By: _____


Scott Schweitzer
TAX ID #: 45-0424007

Oakwood Lakes State Park & Lake Poinsett Recreation Area

	Project Manager	Engr. I	Engr. II	Engr. III	Engr. IV	Senior Engr. Tech	Engr. Tech. I	Engr. Tech. II	Engr. Tech. III	R.L. Surveyor	Survey Crew	Architect	Architect 2
Preliminary Services													
1 Scoping Meetings													
2 Research													
3 Preliminary Field Survey													
Engineering Reports													
4 Alternative Development													
5 Completion Meetings													
Surveying Services													
6 Platting													
7 Easements													
Design Services													
8 Site Inspection													
9 Analysis													
10 Plans & Specs													
11 Progress Meetings													
12 Bidding Assistance													
Const. Mgmt. Services													
13 Construction Staking								10					
14 Const. Inspection								150					
15 Const. Management	5		10										
16 Materials Testing									20				
17 As-builts			4				10						
TOTAL HOURS	5	0	14	0	0	0	10	160	20	0	0	0	0

Project Manager	5	hrs @	\$110.00	=	
Engr. I	0	hrs @	\$90.00	=	\$550.00
Engr. II	14	hrs @	\$85.00	=	\$0.00
Engr. III	0	hrs @	\$70.00	=	\$1,190.00
Engr. IV	0	hrs @	\$60.00	=	\$0.00
Senior Engr. Tech	10	hrs @	\$75.00	=	\$0.00
Engr. Tech. I	10	hrs @	\$65.00	=	\$750.00
Engr. Tech. II	160	hrs @	\$55.00	=	\$650.00
Engr. Tech. III	20	hrs @	\$50.00	=	\$8,800.00
R.L. Surveyor	0	hrs @	\$80.00	=	\$1,000.00
Survey Crew	0	hrs @	\$120.00	=	\$0.00
Architect	0	hrs @	\$110.00	=	\$0.00
Architect 2	0	hrs @	\$70.00	=	\$0.00

Total Direct Labor Costs

\$12,940.00

Additional Costs

\$0.00

Total

\$12,940.00

SOUTH DAKOTA DEPARTMENT OF GAME, FISH & PARKS

Request for Proposal (RFP) Exemptions Check List

Beginning July 1, 2009, the State Auditor's Office will require all professional services contracts signed July 1, 2009 and later to include documentation that the agency has complied with the procedures set forth in HB1260 (SDCL 5-18-55 through 5-18-62). The documentation must include the request for proposal number (RFP) or the reason the agreement is exempt from the requirements of the law. The Auditor's Office has commonly used the term consulting contract to describe the types of professional services contracts addressed in HB1260.

Please complete the following information and attach this form to all signed contracts.

Request for Proposal #: _____

OR

Exemptions include: (Circle those that apply)

- (1) Services of such a unique nature that the contractor selected is clearly and justifiably the only practicable source to provide the service. Determination that the contractor selected is justifiably the sole source is based on either the uniqueness of the service or sole availability at the location required;
- (2) Emergency services necessary to meet an urgent or unexpected requirement or when health and public safety or the conservation of public resources is at risk;
- (3) Services subject to federal law, regulation, or policy or state statute, under which a state agency is required to use a different selection process or to contract with an identified contractor or type of contractor;
- (4) Services for professional legal services and services of expert witnesses, hearing officers, or administrative law judges retained by state agencies for administrative or court proceedings;
- (5) Services involving state or federal financial assistance passed through by a state agency to a political subdivision;
- (6) Medical services and home and community-based services
- (7) Services to be performed for a state agency by another state or local government agency or contracts made by a state agency with a local government agency for the direct provision of services to the public; or
- (8) Services to be provided by entertainers for the state fair and other events.
- ☒ (9) Does not exceed \$50,000.00
- (10) This contract does not meet the definition of a professional services/consulting contract.

Payments for contracts that have not complied with the law will be returned as illegal, unauthorized or improper (SDCL 4-9-7).